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Indigent Defense Newsletter

Fall-Winter Edition

December 20, 2016

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Message from Chair

We welcome our newest members of the Commission who were [appointed](#) by Gov. Greg Abbott on December 15th: [Alex Bunin](#), Chief of the Harris County Public Defender's Office; the Honorable [Richard Evans](#), County Judge of Bandera County; and the Honorable [Missy Medary](#), Presiding Judge of the 5th Administrative Judicial Region of Texas. [Don Hase](#), a defense attorney in Arlington, Texas, and the Honorable [Jon Burrows](#), County Judge of Bell County, were also reappointed. I look forward to working with all of you in advancing indigent defense in Texas in 2017 and beyond!

Unfortunately, we also have to say good-bye to some members who have been invaluable to the Commission's work for many years. The **Honorable Olen Underwood**, Presiding Judge of the 2nd Administrative Judicial Region of Texas, has been my right-hand man as Vice Chair of the Commission since its inception in 2002. Judge Underwood has provided a critically important perspective on how the Commission's policies can impact our trial courts. Judge Underwood's wisdom, calm demeanor, and skill at 42 will be missed.

We also say farewell to **Tony Odiorne**, Assistant Public Defender at the Regional Public Defender for Capital Cases, who has been with the Commission since 2005. Tony has been the chair of the Policies and Standards Committee for many years and has brought the unique perspective of a public defender to the Commission. Thank you, Tony, for your many years of service to the Commission.

The Commission recently published its [FY 2016 Annual Report](#), commemorating the 15th anniversary of the Fair Defense Act and the Texas Indigent Defense Commission. The Commission's FY 2016 Expenditure Report of state and county spending on indigent defense will be published in January 2017 after final review of expenditures is completed later this month.

At the Commission's December 13th meeting, we awarded FY 2017 Formula Grants totaling \$24 million to Texas' 254 counties. The Commission also awarded \$1.1 million in grants to Texas' 14 largest counties that are not eligible to participate in the rural Regional Public Defender for Capital Cases (RPDO).

The [Timothy Cole Exoneration Review Commission](#) (TCERC) recently published its [report](#), which reviewed Texas exonerations to identify the main causes of wrongful convictions and make recommendations to prevent them from occurring in the future. It was an honor to be a member of TCERC, and TIDC's Deputy Director, Wesley Shackelford, did a marvelous job in helping draft the report. For more information, see the [press release](#) and the Texas Judicial Council's [resolution](#) supporting the recommendations of TCERC.

The Texas Judicial Council (TJC) also passed a [resolution](#) supporting the TJC's Criminal Justice Committee recommendations for legislative changes to improve pretrial confinement decision-making. I greatly enjoyed my time serving on the Committee and recommend that you read the Committee's excellent [Report & Recommendations](#).

Sharon Keller

Message from Director

The 85th Legislature convenes on January 10, 2017, and Commission staff have been busy briefing legislators and their staff on our activities and the state of indigent defense in Texas.

One important issue that is before the Legislature this session is the Commission's [FY 2018/19 Legislative Appropriations Request](#). The Commission is seeking \$212.2 million for the biennium, which is half of the estimated expenditures for indigent defense in the State. Currently the State provides only about 12% of the State's indigent defense costs through the Commission's grant programs. The Commission's recommendation is for the State to fully fund indigent defense.

I'm happy to report that the Texas Judicial Council, the policymaking body for the Texas Judicial Branch, has passed a [resolution](#) supporting full state funding of criminal indigent defense, as have many Commissioners Courts across the State.

At its December 13th meeting, the Commission approved a legislative proposal to provide a statutory framework for the Regional Public Defender for Capital Cases (RPDO), which is based in Lubbock and is administratively organized as a department of the county. The legislation would also provide the Commission with rulemaking authority to provide a succession plan, oversight board, and other rules for the successful administration of the program.

Finally, I would also like to welcome our new policy analyst, Scott Ehlers. Scott was in private practice before joining the Commission staff, primarily representing indigent misdemeanor clients in Travis County and conducting case reviews for the Texas DNA Mixture Review Project. He has also served as the Legal and Policy Analyst for the Harris County Public Defender's Office and Senior Policy Advisor to Senator Rodney Ellis. Scott earned his J.D. from the University of Houston Law Center, has a Master's degree in Justice, Law, & Society from the American University and a Bachelor's degree in Government and Economics from the University of Texas at Austin.



**Scott Ehlers,
Policy Analyst**

I wish everyone a joyous holiday and Happy New Year!

Jim Bethke

Appellate and Juvenile Caseload Guidelines Published

TIDC recently released the [Juvenile Addendum](#) and [Appellate Addendum: Guidelines for Indigent Defense Caseloads](#), two new caseload studies based on data collected from defense lawyers statewide. The reports recommend caseload guidelines that will help ensure attorneys have enough time to devote to their cases. Prior to the study, the best available caseload standards were published in 1973 by the National Advisory Commission (NAC) on Criminal Justice Standards and Goals. Since then important changes have occurred that extend the time required for competent and effective defense representation. The *Juvenile Addendum* recommends that for the delivery of reasonably effective representation, defense attorneys should carry an annual full-time equivalent caseload of no more than 168 juvenile cases or 16% fewer than allowed under NAC standards. The *Appellate Addendum* recommends that defense attorneys should handle no more than 31 appellate cases per year, compared with a maximum of 25 cases recommend in the NAC standards. For more information, see TIDC's [press release](#) announcing these important new studies from the [Public Policy Research Institute](#) at Texas A&M University. See also TIDC's original [Guidelines for Indigent Defense Caseloads](#) for court-appointed attorneys in felony and misdemeanor cases.

TIDC Announces FY 2018 Discretionary Grant Opportunities

TIDC has issued the [FY 2018 Discretionary Grant Request for Applications \(RFA\)](#). The Commission offers discretionary grants for counties interested in setting up new programs that improve indigent defense. Funding priorities include programs that put in place mechanisms to ensure quality representation (such as managed assigned counsel and public defender programs), specialized defender programs for mentally ill or juvenile defendants, and indigent defense coordinator positions. Counties are encouraged to contact Commission staff to explore all ideas for programs focused on improving indigent defense.

The application process is competitive and most grants require county matching funds. See the [RFA](#) for full details on single and multi-year grant policies. The application process has two steps. First, counties must submit a brief Intent to Submit Application (ISA) by March 10, 2017. Proposals that meet program requirements will be invited to submit a full grant proposal by May 5, 2017. A discretionary grant online training webinar will be presented on Friday, February 3, 2017 at 1 p.m. Details will be posted soon on the [TIDC website](#). Contact Edwin Colfax, Grant Program Manager at ecolfax@tidc.texas.gov or 512-463-2508 with any questions or to discuss possibilities for your county.

January 2017 Training Events

January 6, 2017
[Highland Lakes Indigent Defense Workshop](#)
Sponsored by TIDC and
Texas Justice Court Training Center
at the Burnet County Justices of the Peace,
Precinct 3, 810 Steve Hawkins Parkway,
Marble Falls, TX
[Registration page](#)



HIGHLAND LAKES INDIGENT DEFENSE WORKSHOP

EFFECTIVE INDIGENT DEFENSE PRACTICES

Friday-January 6th, 2017
Burnet County Justice of the Peace, Precinct 3
810 Steve Hawkins Pkwy, Marble Falls, TX 78654

AGENDA

9:00 a.m.	Welcome and Opening Remarks <i>Judge Peggy Simon, Municipal Court Judge, Cities of Burnet & Bertram</i>
9:15-10:30 a.m.	Duties of Magistrates at Article 16.37 Hearings & Capias Pro Fine Issues <i>Jessalyn Gentry, General Counsel, Texas Justice Court Training Center</i>
10:30-11:00 a.m.	Challenges of Implementing Fair Defense Act Requirements <i>Janice Dickens, Policy Analyst, Texas Indigent Defense Commission</i>
11:00-11:30 a.m.	The Importance of the Early Assignment of Counsel <i>Michelle Moore, Chief Public Defender, Burnet County</i>

REGISTER NOW TO ATTEND
*Seating is limited, please register early.

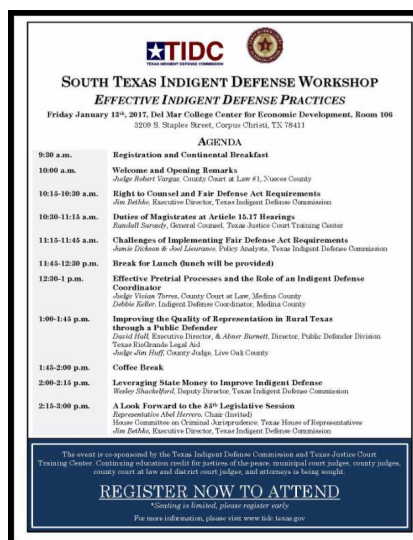
The event is co-sponsored by the Texas Indigent Defense Commission and Texas Justice Court Training Center.

8.56 hours of continuing education credit for justices of the peace, municipal court judges, county judges, county court at law and district court judges, and attorneys is being sought.

For more information, please visit www.tidc.texas.gov

January 13, 2017
[South Texas Indigent Defense Workshop](#)

Sponsored by TIDC and
Texas Justice Court Training Center
at the Del Mar College Center for
Economic Development, Corpus Christi, TX
[Registration page](#)



New and Revised Model Forms

In September 2016, TIDC finalized new or revised model forms as a resource to assist counties in implementing the front end processes necessary for an effective appointment of counsel system. The Magistrate's Warning Form, Adult and Juvenile Affidavits of Indigence, and the Juvenile Intake Form replace prior forms and are intended to streamline and simplify procedures for counties. The Appointment of Counsel for Out-of-County Warrant Arrestees, Waiver of Counsel to Speak with the Prosecutor, and Waiver of Counsel to Plea or Proceed to Trial are new forms based on changes to the law and issues encountered during policy monitoring. Staff sought input from various stakeholders in developing the new and revised forms. For more information, see [Model Forms & Procedure](#) on our website.

Mentoring Private Assigned Counsel in Three Jurisdictions

The overwhelming majority of criminal defense representation is provided by publically-financed attorneys, and most of this representation is provided not by full-time public defenders, but by private attorneys who are assigned or contracted to take cases. Unlike full-time defenders and prosecutors, private assigned counsel typically lack formal structures for training and oversight that would ensure the quality of their work. Counties in Texas that have developed [attorney mentorship programs](#) – where bar associations or court systems pair new attorneys with more experienced attorneys to learn about the law and culture of their jurisdiction – have found them to be a resourceful strategy for preparing private attorneys for criminal defense practice. In three jurisdictions, NLADA will assist in the implementation of mentorship programs, which will be evaluated by a research partner.



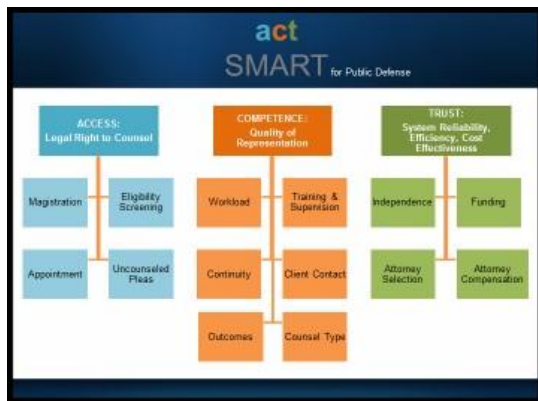
DOJ Smart Defense Grant News

On November 9th, the Indigent Defense Commission convened a National Advisory Committee webinar to review progress on the U.S. Department of Justice "Smart Defense" grant. Led by the Public Policy Research Institute at Texas A&M University, committee members reviewed progress to date on the online indigent defense quality indicator system. The website, themed "ACT Smart for

Public Defense," will compile measures of legal "Access" to counsel, "Competence" of representation, and public "Trust."

The project has been shaped by input from Texas county officials and planners, judges, defenders, state policymakers, and academics, among others. Five jurisdictions including Bexar, Dallas, El Paso, Harris, and Travis counties have taken the challenge to "go first" in populating the online system. The lessons learned from these jurisdictions is critically important for assuring the system's overall feasibility. The State Advisory Committee for the project will convene its second meeting in the spring, and development of the website will continue in the coming year.

[Texas Smart Defense Presentation](#)
at the NLADA 2016 Annual Conference
[Advocacy at a Crossroads: Equality, Justice, and Human Rights](#)



Publications

[Legislative Appropriations Request for Fiscal Years 2018 and 2019](#)

[Special Edition e-Newsletter](#)

[FY 2016 Indigent Defense Expenditure Report \(IDER\) Manual](#) and
[Public Defender Supplement](#)

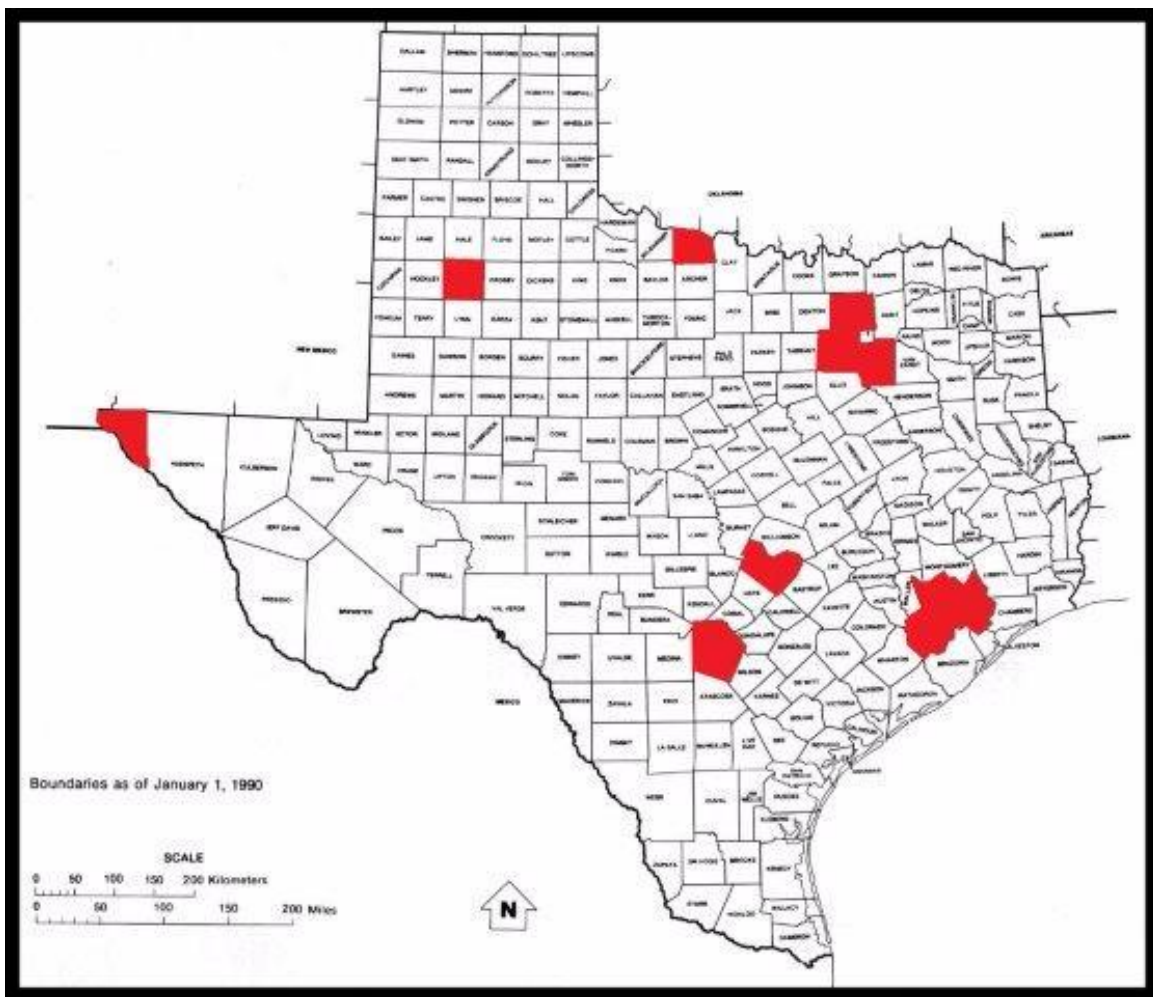
[Fair Defense Law: A Primer for Texas Legislators and Staff](#)

Updated for the 2017 legislative session. Provides legislators and their staff with a basic overview of the 6th Amendment Right to Counsel; the passage of the Fair Defense Act; the Texas Indigent Defense Commission and its programs; and ten key provisions of fair defense law in Texas. Also includes a list of online resources for persons who want additional information.

Recent Training and Events

**Texas Roundtable on Representation of Defendants with Mental Illness:
*Strategies for Operating Effective Mental Health Defender Programs***

In December, Commission staff hosted a [Mental Health Roundtable](#) with defenders from across the state to discuss and share information and strategies on how to effectively operate mental health defender offices. The focus was on what information and data the programs collect and how it can be used effectively to demonstrate the impact of these specialized defender programs. David Slayton also presented to the group on the proposed statutory changes to Articles 16.22 and 17.032, Texas Code of Criminal Procedure, and the work of the Judicial Council on this issue. Meeting materials are available [here](#).



10 counties with Mental Health Defender Programs providing specialized representation for defendants with mental illness

Other Publications of Interest

The U.S. Department of Justice's [Global Justice Information Sharing Initiative](#) recently published a [Public Safety Primer on Cloud Technology](#) and [Understanding Digital Footprints -- Steps to Protect Personal Information](#).

The National Legal Aid & Defender Association (NLADA) published [Increasing Analytics Capacity: A Toolkit for Public Defender Organizations](#) by Mark Erwin and Dr. Meg Ledyard of the Travis County Court System. The guide is designed to help defender programs understand what is involved with increasing their data analytics capacity.

The National Legal Aid and Defender Association (NLADA)
[The Interdisciplinary Defense Team & Confidentiality: What Defenders Need to Know](#)
[50-State Survey of Child Abuse Mandatory Reporting Statutes](#)

Criminal Justice Policy Program at Harvard Law School
[Moving Beyond Money: A Primer on Bail Reform](#)

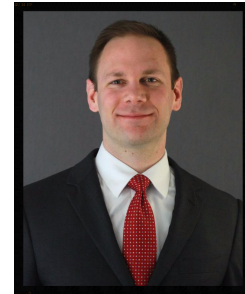
National Association of Criminal Defense Lawyers (NACDL)
[Gideon at 50: Part III](#)

Bureau of Justice Statistics
[State-Administered Indigent Defense Systems, 2013](#) report and [summary document](#)

Around the Nation

By Geoff Burkhart, Guest Contributor

*Geoff Burkhart is an Attorney and Project Director
with the American Bar Association.
He frequently writes on criminal law issues.*



Workload Studies Aim to Improve Public Defense Across the United States

Crushing workloads are the most vexing problem facing public defenders in the United States. Attorneys saddled with hundreds, even thousands, of cases per year must jettison core legal tasks - client communication, investigation, legal research - in violation of constitutional and ethical duties. And their clients, who have a right to effective, ethical counsel, receive representation in name only.

Workload studies have become a strong tool for fighting excessive workloads. The American Bar Association's (ABA) Missouri Project helped create a new type of public defender workload studies. Other studies are now underway in Colorado, Louisiana, Rhode Island, and Tennessee. These studies provide data that can be wielded to shape public defense through education and advocacy.

Texas is emerging as an early leader in these efforts. The 83rd Texas Legislature instructed the Texas Indigent Defense Commission (TIDC) to "conduct and publish a study for the purpose of determining guidelines for establishing a maximum allowable caseload for a criminal defense attorney that... allows the attorney to give each indigent defendant the time and effort necessary to ensure effective representation." Consequently, last year, TIDC completed a [workload study](#) of Texas public defense providers. Realizing that *juvenile justice* and appeals require a different set of standards, TIDC commissioned separate studies for those areas. This month, the results of those studies were released: [Juvenile Addendum](#) and [Appellate Addendum](#).

These studies not only provided excellent, data-based, Texas-specific workload standards, but also helped refine the ABA's approach to workload studies in other states. They also require public defense attorneys to track their time in fractions of an hour. Although time-tracking is commonplace in law firms with billable hours, it's unusual for public defender offices. Yet there are great benefits to time-tracking. Attorneys are able to see how they *actually* spend their time. Many are surprised, for example, to find how little time they spend with clients. Additionally, public defense managers and supervisors are able to view their attorneys' work practices and workloads, allowing them to distribute cases more evenly and offer additional training where necessary.

Too often, public defenders have pushed for additional funding without any data to back up their requests. Without data, these requests often sound like "bellyaching." But it is far more difficult to turn a deaf ear to data. These Texas studies provide just that. We now know just how much time Texas attorneys should be spending per case. We now know just how many cases each attorney should commit to each year. These studies strike a balance between efficiency and effectiveness and should be a point of pride for the Texas legal community.

Commission Members

Ex Officio Members:

The Honorable Sharon Keller, Chair
The Honorable Nathan L. Hecht
The Honorable Sherry Radack
The Honorable Linda Rodriguez
The Honorable Brandon Creighton
The Honorable John Whitmire
The Honorable Andrew Murr
The Honorable Abel Herrero

Members Appointed by Governor:

The Honorable Missy Medary
The Honorable Jon Burrows
The Honorable Richard Evans
Mr. Alex Bunin
Mr. Don Hase

Mission Statement

The Texas Indigent Defense Commission provides financial and technical support to counties to develop and maintain quality, cost-effective indigent defense systems that meet the needs of local communities and the requirements of the Constitution and state law.

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